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Siemens v. Manitoba (Attorney General), [2003] 1 S.C.R. 6, 2003 SCC 3

David Albert Siemens, Eloisa Ester Siemens and

Sie-Cor Properties Inc. o/a The Winkler Inn

Appellants

v.

The Attorney General of Manitoba and

the Government of Manitoba

Respondents

and

Attorney General of Canada, Attorney General of Ontario,

Attorney General of New Brunswick, Attorney General

of Alberta, 292129 Alberta Ltd., operating as The Empress Hotel,

484906 Alberta Ltd., operating as Lacombe Motor Inn,

Leto Steak & Seafood House Ltd., Neubro Holdings Inc.,

operating as Lacombe Hotel, Wayne Neufeld, 324195 Alberta Ltd.,

operating as K.C.'s Steak & Pizza, and Katerina Kadoglou

Interveners

Indexed as: Siemens v. Manitoba (Attorney General)

Neutral citation: 2003 SCC 3.

File No.: 28416.

Hearing and judgment: October 31, 2002.

Reasons delivered: January 30, 2003.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

on appeal from the court of appeal for manitoba

Constitutional law — Distribution of legislative powers — Criminal law — Property and civil rights — Matters of local or private nature — Gaming — Province enacting local option legislation enabling municipalities to hold binding plebiscites on prohibition of video lottery terminals in their communities — Whether legislation and section deeming non-binding plebiscite to be binding plebiscite held in accordance with legislation intra vires province — Constitution Act, 1867, ss. 91 (27), 92(13), (16) — The Gaming Control Local Option (VLT) Act, S.M. 1999, c. 44, s. 16.

Constitutional law — Charter of Rights — Freedom of expression — Life, liberty and security of person — Equality — Local option legislation enabling municipalities to hold binding plebiscites on prohibition of video lottery terminals in their communities — Whether legislation infringes freedom of expression, right to life, liberty and security of person or right to equality guaranteed in Charter — Canadian Charter of Rights and Freedoms, ss. 2(b), 7, 15(1) — The Gaming Control Local Option (VLT) Act, S.M. 1999, c. 44, s. 16.

The Manitoba Lotteries Corporation (“MLC”) manages the operation of video lottery terminals (“VLTs”) in the province, by entering into agreements with “siteholders” and placing VLTs, which remain the property of the MLC, on the siteholders’ premises. The appellants were siteholders with several VLTs generating revenue at their place of business. In 1998, the Town of Winkler held a non-binding plebiscite supporting the prohibition of VLTs in their town. The following year, the Government of Manitoba enacted local option legislation (*The Gaming Control Local Option (VLT) Act* (“VLT Act”)), enabling municipalities to hold binding plebiscites on the prohibition of VLTs. Section 16 of the *VLT Act* referred specifically to the Winkler plebiscite, deeming it to be binding and resulting in the termination of the appellants’ siteholder agreement and the removal of the VLTs from their premises. The appellants challenged the legislation on the grounds that s. 16 violated ss. 2(b), 7 and 15 (1) of the *Canadian Charter of Rights and Freedoms* and that the legislation was *ultra vires* the

provincial government because it encroached on the exclusive federal criminal law jurisdiction. The motions judge rejected these claims, and the Court of Appeal upheld that decision.

Held: The appeal should be dismissed.

The *VLT Act* in its entirety and s. 16 in particular are *intra vires* the provincial legislature. To determine whether there was legislative authority to enact the *VLT Act*, the purpose and effects of the legislation must be analysed to ascertain its pith and substance. The Act's purposes are to regulate gaming in the province and to allow for local input on the issue of VLTs, both of which fall under s. 92 of the *Constitution Act, 1867*. Section 16(1) deals specifically with siteholder agreements which are contractual in nature and thereby fall under property and civil rights. On a broader level, the municipal plebiscites empower each community to determine whether VLTs will be permitted, thereby invoking matters of a local nature. The *VLT Act* is not a colourable attempt to legislate criminal law as it does not create penal consequences, and was not enacted for a criminal law purpose. Local morality may affect which municipalities choose to ban VLTs through binding plebiscites, but this moral aspect is incidental to the overall regulatory scheme. The *Criminal Code* specifically creates an exception to the gaming offences where provincial lottery schemes are established, affirming the double aspect of gaming, promoting federal-provincial cooperation and removing operational conflict and any question of paramountcy. Lastly, local option legislation is a valid exercise of legislative power and not an improper abdication of the legislature's law-making powers. The application of a statutory VLT prohibition is conditional upon there being a certain plebiscite result, allowing municipalities to decide on the applicability of the Act to their communities.

The appellants' *Charter* rights were not violated by the Act. Section 16 does not violate s. 2 (b) of the *Charter* by denying the appellants the right to vote. While voting is a protected form of expression, there is no constitutional right to vote in a referendum, as a referendum is a creation of legislation. Moreover, the *VLT Act* does not prevent the residents of Winkler from voting in future plebiscites on the issue of VLTs. Section 16 also does not violate the appellants' s. 7 *Charter* rights. The right to life, liberty and security of the person encompasses fundamental life choices, not pure economic interests. Finally, the appellants' rights under s. 15(1) were not violated. Residence in Winkler is not an analogous ground, as there is nothing to suggest that residents there are historically disadvantaged or that they suffer from any sort of prejudice. Moreover, the legislation does not discriminate against the appellants in any substantive sense. Winkler residents were singled out in s. 16 because theirs was the only municipality to have already held a plebiscite. There was no harm to dignity. The purpose of s. 16 was to respect the will of the Winkler residents as expressed in that plebiscite. The section does not affect the right of Winkler residents to vote in a VLT plebiscite under the Act and they may initiate a plebiscite to reinstate VLTs in their community.

Cases Cited

Applied: *R. v. Furtney*, [1991] 3 S.C.R. 89; *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497; *Russell v. The Queen* (1882), 7 App. Cas. 829; *Attorney-General for Ontario v. Canada Temperance Federation*, [1946] A.C. 193; *Haig v. Canada*, [1993] 2 S.C.R. 995; **distinguished:** *Johnson v. Attorney General of Alberta*, [1954] S.C.R. 127; *Re The Initiative and Referendum Act* (1916), 27 Man. R. 1; **referred to:** *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326; *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154; *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877; *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, [2002] 2 S.C.R. 146, 2002 SCC 31; *O'Grady v. Sparling*, [1960] S.C.R. 804; *Ross v. Registrar of Motor Vehicles*, [1975] 1 S.C.R. 5; *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494, 2000 SCC 21; *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59; *Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1949] S.C.R. 1, aff'd [1951] A.C. 179 (sub nom. *Canadian Federation of Agriculture v. Attorney-General for Quebec*); *Reference re Firearms Act (Can.)*, [2000] 1 S.C.R. 783, 2000 SCC 31; *Reference re The Farm Products Marketing Act*, [1957] S.C.R. 198; *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662; *OPSEU v. Ontario (Attorney General)*, [1987] 2 S.C.R. 2; *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844; *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44; *R. v. Turpin*, [1989] 1 S.C.R. 1296; *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, ss. 1, 2(b), 6, 7, 15(1).

Constitution Act, 1867, ss. 91(27), 92(13), (15), (16).

Criminal Code, R.S.C. 1985, c. C-46, s. 207 [rep. & sub. c. 52 (1st Supp.), s. 3].

Gaming Control Act, S.M. 1996, c. 74, s. 1 "video lottery terminal".

Gaming Control Local Option (VLT) Act, S.M. 1999, c. 44, ss. 1 "plebiscite", "video lottery gaming", 3, 16.

Human Rights Code, S.M. 1987-88, c. 45.

Authors Cited

Manitoba. Gaming Control Commission. *Municipal VLT Plebiscite Review*. Winnipeg: The Commission, 1998.

Manitoba. Legislative Assembly. *Debates and Proceedings*, 5th Sess., 36th Leg., vol. XLIX, No. 57A, July 8, 1999, p. 4092.

Manitoba Lottery Policy Review. *Working Group Report*. Winnipeg: The Manitoba Lottery Policy Review Working Group, 1995.

APPEAL from a judgment of the Manitoba Court of Appeal, [2001] 2 W.W.R. 515, 153 Man. R. (2d) 106, 85 C.R.R. (2d) 59, [2000] M.J. No. 588 (QL), 2000 MBCA 152, affirming a decision of the Court of Queen's Bench, [2001] 2 W.W.R. 491, 151 Man. R. (2d) 49, 78 C.R.R. (2d) 268, [2000] M.J. No. 417 (QL), 2000 MBQB 140. Appeal dismissed.

David G. Hill and Curtis A. Knudson, for the appellants.

Shawn Greenberg and Jayne Kapac, for the respondents.

Robert W. Hubbard, for the intervener the Attorney General of Canada.

Hart Schwartz, for the intervener the Attorney General of Ontario.

Gabriel Bourgeois, Q.C., for the intervener the Attorney General of New Brunswick.

Roderick Wiltshire, for the intervener the Attorney General of Alberta.

Ronald J. Dumonceaux and *Graham K. Neill*, for the interveners 292129 Alberta Ltd. et al.

The judgment of the Court was delivered by

MAJOR J. —

I. Introduction

1 In 1999, the Government of Manitoba enacted local option legislation enabling municipalities to hold binding plebiscites on the prohibition of video lottery terminals (“VLTs”) in their communities. The legislation set out the procedure by which the plebiscites were to be initiated, held, and given effect. In addition, the legislation contained a specific section dealing with the Town of Winkler, which had held a non-binding plebiscite supporting a prohibition of VLTs the previous year. As a result of the legislation, VLTs were prohibited in Winkler until such time as a future binding plebiscite, held in accordance with the legislation, would permit their return to the municipality.

2 Both the Manitoba Court of Queen’s Bench and the Court of Appeal concluded that *The Gaming Control Local Option (VLT) Act*, S.M. 1999, c. 44 (“*VLT Act*”), either as a whole or s. 16 in particular, was neither *ultra vires* the provincial legislature nor did it violate the *Canadian Charter of Rights and Freedoms*. The appellants subsequently challenged the legislation before this Court on the grounds that s. 16, dealing specifically with Winkler, violates ss. 2(b), 7, and 15(1) of the *Charter*. They also argued that the legislation is *ultra vires* the provincial government because it is an affront to Parliament’s exclusive jurisdiction over criminal law. On October 31, 2002, the Court unanimously dismissed their appeal. These are the reasons for that decision.

II. Facts

3 The Manitoba Lotteries Corporation (“MLC”) is responsible for operating lottery schemes, including VLTs, in the province. The MLC enters into agreements with “siteholders” to place VLTs on the siteholders’ property. The siteholders then receive a percentage of the VLTs’ revenue. However, the VLTs remain the property of the MLC and, according to the terms of the siteholder

agreement, can be removed at any time, with or without cause.

4 The appellants, David and Eloisa Siemens, are the sole shareholders of Sie-Cor Properties Inc., which purchased The Winkler Inn in 1993. They invested a considerable amount of money in the renovation and expansion of the Inn, and submitted that VLTs were an important consideration when making their investment. The appellants increased the number of VLTs from 8 to 10 when they first purchased The Winkler Inn, and then from 10 to 12 in the fall of 1994. Their mortgage payments roughly coincided with the monthly VLT revenue.

5 In August 1998, the Town of Winkler passed a resolution to hold a plebiscite regarding VLTs in the municipality. The plebiscite was held in conjunction with the October municipal elections. The question was:

Should the Town of Winkler request that the Provincial Government ban video lottery terminals in Winkler, which would result in the Town of Winkler losing its annual municipal VLT grant?

Approximately 50 percent of eligible voters participated in the plebiscite, including Mr. and Mrs. Siemens. A sizeable majority (77.8 percent) of the votes cast were in favour of requesting a ban on VLTs. In response to the plebiscite, the Town of Winkler passed a resolution in December 1998 to forward the results to the Government of Manitoba. Sie-Cor Properties Inc., in turn, filed an application in the Court of Queen's Bench seeking a declaration that the resolution was invalid and an order of *certiorari* quashing it.

6 In July 1999, while Sie-Cor's application was proceeding to a hearing, the Manitoba Government passed the *VLT Act*. The Act permits municipalities to hold binding plebiscites regarding the prohibition of VLTs within their jurisdictions. In addition, the government used the new legislation as an opportunity to give effect to the plebiscite that had already been held in Winkler. Specifically, s. 16 of the Act seeks to terminate the siteholder agreements in Winkler and deems that a resolution prohibiting VLTs was passed in accordance with the Act. Pursuant to this legislation, the siteholder agreement with The Winkler Inn was terminated effective December 1, 1999.

III. Relevant Statutory Provisions

1 In this Act,

...

“plebiscite” means a vote by the electors of a municipality on a resolution approved by the council or stated on a petition

(a) to prohibit video lottery gaming within the municipality, or

(b) where video lottery gaming within the municipality is prohibited because of a plebiscite, to permit video lottery gaming within the municipality;

...

“video lottery gaming” means the operation of a lottery scheme, as defined in the *Criminal Code* (Canada), that involves the use of a video lottery terminal.

3(1) Notwithstanding section 3 of *The Manitoba Lotteries Corporation Act*, no person shall carry on any video lottery gaming, under a siteholder agreement or otherwise, within a municipality while a resolution prohibiting video lottery gaming within the municipality is in effect.

3(2) A resolution prohibiting video lottery gaming within a municipality comes into effect on the first day of the fifth month following the month in which it is approved by a majority of the votes cast in a plebiscite and continues in effect until a resolution permitting video lottery gaming within the municipality is approved by a majority of the votes cast in a plebiscite.

16(1) Each siteholder agreement existing before the coming into force of this section respecting the operation of video lottery terminals at a site located in the Town of Winkler is terminated on the first day of the fifth month following the month in which this Act comes into force, and the corporation shall remove all video lottery terminals from sites located in the Town of Winkler as soon as practicable after that day.

16(2) A resolution to prohibit video lottery gaming within the Town of Winkler is deemed for the purposes of this Act to have been approved by a plebiscite and is deemed to come into effect on the first day of the fifth month following the month in which this Act comes into force.

Criminal Code, R.S.C. 1985, c. C-46

207. (1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

(a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province.

Constitution Act, 1867

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, —

...

13. Property and Civil Rights in the Province.

...

16. Generally all Matters of a merely local or private Nature in the Province.

Canadian Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication

...

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

IV. Judgments Below

A. *Manitoba Court of Queen's Bench*, [2001] 2 W.W.R. 491, 2000 MBQB 140

8 In March 2000, Hamilton J. heard arguments on a motion to have certain questions of law determined before trial on Sie-Cor's *certiorari* application. At issue was whether the *VLT Act*, either as a whole or s. 16 in particular, was *ultra vires* the provincial legislature as an invasion into the federal government's criminal law power, and whether s. 16 violated ss. 2(b), 6, 7, and 15(1) of the *Charter*. It was also argued that the legislation constituted prohibited discrimination under the *Manitoba Human Rights Code*, S.M. 1987-88, c. 45. Hamilton J. rejected all the appellants' claims.

9 In dismissing the division of powers argument, Hamilton J. relied on *R. v. Furtney*, [1991] 3 S.C.R. 89. That case held that gaming was a matter within the "double aspect" doctrine, such that both Parliament and the provincial legislatures had jurisdiction to legislate in that area. She found that the *VLT Act* was, therefore, *prima facie* within the legislative authority of the Manitoba Government. She also found that the *VLT Act* was not an attempt to enact criminal law, as the legislation lacked both penal consequences and a criminal law purpose.

B. *Manitoba Court of Appeal*, [2001] 2 W.W.R. 515, 2000 MBCA 152

10 In a short oral judgment delivered by Twaddle J.A. (Kroft and Steel J.J.A. concurring), the Manitoba Court of Appeal dismissed the appeal on all grounds, expressing that it was in "substantial agreement" with Hamilton J., "both with respect to the declarations made and her reasons for them".

V. Issues

11 By order of the Chief Justice dated December 19, 2001, the following constitutional questions were stated for the Court's consideration:

- (1) Is *The Gaming Control Local Option (VLT) Act*, S.M. 1999, c. 44, in its entirety *ultra vires* the Legislature of the Province of Manitoba as it relates to a subject matter which is within the exclusive jurisdiction of the Parliament of Canada under s. 91(27) of the *Constitution Act, 1867*?
- (2) Is s. 16(1) of *The Gaming Control Local Option (VLT) Act* *ultra vires* the Legislature of the Province of Manitoba as it relates to a subject matter which is within the exclusive jurisdiction of the Parliament of Canada under s. 91(27) of the *Constitution Act, 1867*?

- (3) Is s. 16 of *The Gaming Control Local Option (VLT) Act* inconsistent with s. 2(b) of the *Canadian Charter of Rights and Freedoms*?
- (4) If the answer to question 3 is in the affirmative, is s. 16 of *The Gaming Control Local Option (VLT) Act* nevertheless justified by s. 1 of the *Canadian Charter of Rights and Freedoms*?
- (5) Is s. 16 of *The Gaming Control Local Option (VLT) Act* inconsistent with s. 7 of the *Canadian Charter of Rights and Freedoms*?
- (6) If the answer to question 5 is in the affirmative, is s. 16 of *The Gaming Control Local Option (VLT) Act* nevertheless justified by s. 1 of the *Canadian Charter of Rights and Freedoms*?
- (7) Is s. 16 of *The Gaming Control Local Option (VLT) Act* inconsistent with s. 15(1) of the *Canadian Charter of Rights and Freedoms*?
- (8) If the answer to question 7 is in the affirmative, is s. 16 of *The Gaming Control Local Option (VLT) Act* nevertheless justified by s. 1 of the *Canadian Charter of Rights and Freedoms*?

VI. Analysis

A. Interpreting the VLT Act

12 A significant portion of the appellants' submissions focussed on the proper characterization and interpretation of the *VLT Act*, and particularly s. 16 of that Act. The main thrust of their argument was that s. 16 of the *VLT Act* did not "give effect" to the plebiscite that occurred in Winkler in 1998 and that, therefore, the constitutionality of the legislation must be assessed without reference to that plebiscite. They noted that s. 16 does not explicitly refer to the 1998 plebiscite, and that s. 16(2) refers to the indefinite "a plebiscite" rather than the definite "the plebiscite". As well, they submitted that the subsection deems a resolution prohibiting gaming to have been passed by a municipal plebiscite in Winkler, when no such resolution was ever approved by the town council. These

characteristics allegedly demonstrate that s. 16 of the *VLT Act* did not give effect to the plebiscite that actually occurred in Winkler in the fall of 1998, and that it unfairly attributes a binding plebiscite to the residents of Winkler, who never voted in such a plebiscite.

13 The appellants expressed puzzlement at being affected by the 1998 plebiscite, as that plebiscite was not held pursuant to a resolution prohibiting VLTs, as required by the Act. The answer to that puzzlement is that the *VLT Act* has a more general application, and, in accordance with the principles of purposive interpretation, that s. 16 was intended to incorporate the wishes already expressed by Winkler voters into the broader provincial scheme.

14 No doubt the legislation could have been drafted in a way that more explicitly expressed the purpose of s. 16. Nevertheless, given the entire context of the legislation, the legislative purpose is clear. The Town of Winkler held a non-binding plebiscite in the fall of 1998, in which a majority of votes cast supported a request to remove VLTs from the community. The town council forwarded the results of the plebiscite to the provincial government. In response, the provincial government enacted legislation prohibiting the operation of VLTs in Winkler and terminating all siteholder agreements in that community.

15 The appellants acknowledged at the appeal that, if the government had wished to enact legislation dealing solely with the prohibition of VLTs in the Town of Winkler, it could legitimately have done so. However, instead of giving effect to the Winkler plebiscite in an act designed solely for that purpose, the government incorporated a section prohibiting VLTs in Winkler into a larger statute that established a scheme for all municipalities to prohibit or reinstate VLTs through binding plebiscites. I cannot see how the legislative structure chosen by the government affects the Act's constitutionality. Through the *VLT Act*, the province attempted to bring Winkler within the larger scheme of VLT plebiscites in the province. In order to do so, it deemed that Winkler voters had approved a VLT prohibition in accordance with the Act. All the parties agree that the Winkler plebiscite did not, in fact, approve such a prohibition. Indeed, since the Winkler plebiscite preceded the introduction of the *VLT Act*, it was impossible for voters to do so. Regardless, the legislature had the latitude to give effect to the Winkler plebiscite by various means, including the deeming provision it used. Unless the legislation is otherwise unconstitutional, the particular means chosen by the legislature cannot be used as a basis to declare it invalid.

16 It should be noted that the less-than-ideal legislative drafting is not an independent ground upon which legislation can be found unconstitutional. The wording of the statute is only relevant to the analysis in so far as it informs the determination of the pith and substance of the legislation. As long as the pith and substance of s. 16 falls within the provincial sphere of legislative authority, it is immaterial whether it could have been drafted in clearer terms.

17 Similarly, it cannot be concluded that the wording of s. 16 dictates that the appellants' *Charter* claims must be assessed without considering the Winkler plebiscite of 1998. This Court has stated on numerous occasions that the evaluation of *Charter* claims should be contextual: *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 344 (*per* Dickson J. (as he then was)); *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, at pp. 1355-56 (*per* Wilson J.); *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154, at pp. 224-26 (*per* Cory J.); *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, at para. 87 (*per* Bastarache J.); *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at para. 62 (*per* Iacobucci J.). The purpose and effects of the legislation cannot be examined in a vacuum, but must be considered in light of the facts as they are known to both the claimant and the legislator.

18 The rationale for contextual analysis is particularly strong in this case. But for the 1998 Winkler plebiscite, the provincial government would never have enacted s. 16 of the *VLT Act*. The legislature did not single out the Town of Winkler on an arbitrary basis; rather, it enacted s. 16 to respond to the wishes of Winkler voters. If the Court were to ignore the 1998 plebiscite in assessing the *Charter* claims, it would be ignoring the very circumstances that gave rise to the impugned section. This is both logically and legally flawed. Nevertheless, the analysis of the *Charter* claims is not dependent on the existence of the 1998 plebiscite, and the legislation would have been upheld in any event. The contextual analysis merely strengthens that conclusion.

B. The Division of Powers Claim

19 To determine whether the Manitoba Government had legislative authority to enact the *VLT Act*, it is necessary to identify the pith and substance of that legislation. In *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, [2002] 2 S.C.R. 146, 2002 SCC 31, at para. 53, it was held that the pith and substance analysis involves an inquiry into both the purpose of the legislation and its effects. LeBel J. also wrote that, where a specific section of the legislation is being challenged, its pith and substance should be identified before that of the Act as a whole. If the impugned section is *ultra vires*, it may still be upheld if it is sufficiently integrated into a valid provincial legislative scheme (para. 58). However, since the appellants in the present case have challenged both s. 16 and the *VLT Act* as a whole, it is necessary to identify the pith and substance of both in any event.

20 The purpose of s. 16 of the *VLT Act* is to prohibit VLTs in Winkler and to cancel all existing siteholder agreements with respect to VLTs. The legislative debates on the *VLT Act* indicate that s. 16 was enacted to give effect to the plebiscite that had already been held in Winkler, albeit before the Act came into force. The responsible Minister said:

As you may be aware, Madam Speaker, last fall the citizens of Winkler conducted a plebiscite requesting the removal of VLTs from that community. This legislation supports that community's will. This legislation will recognize the legitimacy of the 1998 VLT plebiscite in Winkler.

(Manitoba, Legislative Assembly, *Debates and Proceedings*, 5th Sess., 36th Leg., vol. XLIX, No. 57A, July 8, 1999, at p. 4092 (Mrs. Render))

The effect of s. 16(1) of the *VLT Act* was to cancel the siteholder agreement with The Winkler Inn. Further, as indicated, s. 16(2) attempted to bring the non-binding Winkler plebiscite within the local option scheme outlined in the other sections of the Act. The Act allows plebiscites to be held on whether to prohibit VLTs within the municipality or, where a VLT prohibition is already in effect, on whether to reinstate VLTs within the municipality. Thus, by deeming a resolution prohibiting VLTs to have been approved in Winkler in accordance with the Act, the effect of s. 16(2) is to put the Town of Winkler into the "starting position" of prohibiting VLTs. If a subsequent VLT plebiscite is to be held in Winkler, the question will ask whether to reinstate VLTs in that community.

21 More broadly, the purpose of the *VLT Act* as a whole seems to be, quite simply, to allow municipalities to express, by binding plebiscite, whether they wish VLTs to be permitted or prohibited within their communities. This purpose is evident from the title of the Act, *The Gaming Control Local Option (VLT) Act*, which clearly expresses the government's desire to obtain local input on the issue of VLTs. The *VLT Act* was the government's response to two reports: the Manitoba Lottery Policy Review's *Working Group Report* (1995) (the "Desjardins Report"), and the Manitoba Gaming Control Commission's *Municipal VLT Plebiscite Review* (1998). Both reports recommended that municipal plebiscites be held to determine local opinion on the issue of VLTs.

22 The pith and substance of the *VLT Act* falls within a provincial head of legislative authority. As Stevenson J. wrote for this Court in *Furtney, supra*, at p. 103, gaming is a matter that falls within the "double aspect" doctrine. Accordingly, gaming can be subject to legislation by both the federal and provincial governments:

In my view, the regulation of gaming activities has a clear provincial aspect under s. 92 of the *Constitution Act, 1867* subject to Parliamentary paramountcy in the case of a clash between federal and provincial legislation. . . . Altogether apart from features of gaming which attract criminal prohibition, lottery activities are subject to the legislative authority of the province under various heads of s. 92, including, I suggest, property and civil rights (13), licensing (9), and maintenance of charitable institutions (7) (specifically recognized by the *Code* provisions). Provincial licensing and regulation of gaming activities is not *per se* legislation in relation to criminal law.

Without foreclosing discussion on other potential heads of jurisdiction, it is sufficient for this appeal to find that the *VLT Act* was, *prima facie*, validly enacted under ss. 92(13) and 92(16). Section 16(1) deals specifically with the siteholder agreements, which are contractual in nature and thereby fall under property and civil rights. On a broader level, the municipal plebiscites empower each community to determine whether VLTs will be permitted, thereby invoking matters of a local nature.

23 The *VLT Act* is not, as the appellants have submitted, a colourable attempt to legislate criminal law. The Act does not possess the relevant characteristics outlined by Rand J. in *Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1949] S.C.R. 1, at p. 50, and affirmed by the Privy Council in *Canadian Federation of Agriculture v. Attorney-General for Quebec*, [1951] A.C. 179, at p. 196, and, more recently, in *Reference re Firearms Act (Can.)*, [2000] 1 S.C.R. 783, 2000 SCC 31, at para. 27. These are (1) a prohibition, (2) coupled with a penalty, and (3) a criminal law purpose. The respondents conceded that the *VLT Act* contains a prohibition, namely, s. 3(1) prohibits the operation of VLTs in municipalities that have banned them as the result of a binding plebiscite. Nevertheless, this alone is insufficient to establish that the *VLT Act* is, in pith and substance, criminal law. The Act does not create penal consequences, and was not enacted for a criminal law purpose.

24 Although s. 3(1) prohibits the operation of VLTs in relevant municipalities, it does not create a provincial offence. Nor does it impose a penalty for operating VLTs in those municipalities. If VLT operators were to be charged with any offence, it would be under the gaming provisions in the *Criminal Code*, which prohibit gambling except in accordance with lottery schemes conducted and managed by the provinces. The effect of s. 3(1) of the *VLT Act* is simply to remove the exception and give full effect to the existing federal offences.

25 However, even if the *VLT Act* did create a provincial offence or impose a fine, that would not necessarily make it an attempt to legislate criminal law. Section 92(15) of the *Constitution Act, 1867* allows the provincial legislatures to impose fines or other punishments as a means of enforcing valid provincial law, and the provinces have enacted countless punishable offences within their legislative spheres. Motor vehicle offences are the classic example, and they have been declared constitutionally valid in, *inter alia*, *O'Grady v. Sparling*, [1960] S.C.R. 804 (careless driving); and *Ross v. Registrar of Motor Vehicles*, [1975] 1 S.C.R. 5 (provincial licence suspension upon conviction for *Criminal Code* impaired driving offence). The mere presence of a prohibition and a penalty does not invalidate an otherwise acceptable use of provincial legislative power.

26 The appellants submitted that the *VLT Act* contains penal consequences because it terminates all siteholder agreements in municipalities that have voted to prohibit VLTs in accordance with the Act. Relying on this Court's decision in *Johnson v. Attorney General of Alberta*, [1954] S.C.R. 127, they argued that the provisions of the *VLT Act* result in the forfeiture of VLTs, which can be characterized as a penalty. However, the termination of siteholder agreements cannot be characterized as a forfeiture within the meaning of the criminal law. At all times during a siteholder agreement, the

MLC maintains ownership of the VLTs. The siteholder (in this case, the appellants) has no property interest in the machines. Therefore, when the agreement is terminated and the VLTs are removed from the siteholder's establishment, the siteholder is not required to forfeit any property. The siteholder has merely lost the opportunity to earn a percentage of the revenue that the VLTs generate.

27 That is sufficient to distinguish the present appeal from *Johnson, supra*, which properly identified the alleged penalty as a forfeiture. In that case, the impugned legislation specifically denied property rights in slot machines. Where the machines were being operated contrary to the legislation, the Act allowed police to confiscate those machines even if, except for the legislation, they would have been considered the property of the offender. In short, a violation of the legislation struck down in *Johnson* resulted in a loss of property. In the present case, however, the *VLT Act* merely allows the MLC to reclaim its own VLTs. This cannot be considered a forfeiture.

28 The conclusion that the *VLT Act* does not impose penal consequences makes it unnecessary to determine whether it was enacted for a criminal law purpose. Nevertheless, certain submissions made during the course of proceedings warrant a brief response. The appellants argued that the *VLT Act* was enacted for purposes of public morality, and that it was, therefore, an attempt to legislate criminal law. This submission is flawed on several bases. First, the trial judge found no evidence indicating that this law was enacted to regulate public morality. The province has authority to regulate gaming, and this includes provisions regulating where gaming may be conducted. Just as the province can regulate when and where alcohol may be legally consumed, so can it regulate when and where individuals can legally operate VLTs. It does not follow that, in doing so, the province is somehow regulating public morality.

29 Second, the province and individual municipalities may have any number of reasons for restricting gaming to certain locations. Some may concern the local economy, and others may be purely aesthetic or cultural. There is no basis on which to assume that the dominant purpose for prohibiting VLTs in certain locations is to regulate public morality. Indeed, the fact that the *VLT Act* does not affect VLTs located at racetracks or other "premises dedicated to gaming activity" suggests that the government was not attempting to condemn VLTs on any moral basis. See *Gaming Control Act*, S.M. 1996, c. 74, s. 1. Rather, it supports the interpretation that the *VLT Act* was designed merely to limit more "incidental" contact with VLTs — in taverns, for example — in municipalities that wish to do so.

30 Third, the presence of moral considerations does not *per se* render a law *ultra vires* the provincial legislature. In giving Parliament exclusive jurisdiction over criminal law, the *Constitution Act, 1867* did not intend to remove all morality from provincial legislation. In many instances, it will be impossible for the provincial legislature to disentangle moral considerations from other issues. For example, in the present case, it is difficult to ignore the various social costs associated with gambling and VLTs. As the Desjardins Report, *supra*, examined in detail, government-run gambling can have adverse social consequences, including addiction, crime, bankruptcy, and reductions in charitable gaming. The provincial government can legitimately consider these social costs when deciding how to

regulate gaming in the province. The fact that some of these considerations have a moral aspect does not invalidate an otherwise legitimate provincial law.

31 The dominant purpose of the *VLT Act* is to regulate gaming in the province. Any moral aspects of the *VLT Act* fall within the doctrine of “incidental effects”, recently affirmed by this Court in *Kitkatla Band, supra*, at para. 54; and *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494, 2000 SCC 21, at para. 23. Where a law is in pith and substance related to the provincial legislative sphere, it will not be struck down merely because it has incidental effects on a federal head of power. For instance, in *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59, it was held that a provincial law restricting nude entertainment at licensed taverns was valid. It is reasonable to assume that such a law would have had some incidental effects on public morality. Yet, the Court found that the law was validly enacted because in pith and substance it dealt with licensing, local matters, and property and civil rights.

32 In the present appeal, the provincial government passed a law that was within a provincial head of legislative authority. Although there is a possibility that local morality may affect which municipalities choose to ban VLTs through binding plebiscites, the dominant purpose of the *VLT Act* is not to express moral disapproval of VLTs. In as much as there is a moral aspect to the *VLT Act*, this effect is incidental to the overall regulatory scheme, and does not infringe on Parliament’s exclusive authority to legislate criminal law.

33 In making this determination, I am mindful of the presumption of constitutionality recognized in *Reference re The Farm Products Marketing Act*, [1957] S.C.R. 198, at p. 255; *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662, at pp. 687-88; *Re Firearms Act, supra*, at para. 25. When faced with two plausible characterizations of a law, we should normally choose that which supports the law’s constitutional validity.

34 The Attorney General of Canada’s intervention in support of the provincial government creates a situation of attempted federal-provincial cooperation. The governments, in the absence of jurisdiction, cannot by simple agreement lend legitimacy to a claim that the *VLT Act* is *intra vires*. However, given that both federal and provincial governments guard their legislative powers carefully, when they do agree to shared jurisdiction, that fact should be given careful consideration by the courts: *OPSEU v. Ontario (Attorney General)*, [1987] 2 S.C.R. 2, at pp. 19-20; *Kitkatla Band, supra*, at paras. 72-73.

35 This principle is further bolstered in the present case by the explicit interaction of the *Criminal Code* and provincial gaming legislation. Section 207(1)(a) of the *Criminal Code* specifically creates an exception to the gaming and betting offences where a lottery scheme has been established by

a province. It was first enacted in 1969 for the purpose of decriminalizing lotteries and allowing each province to determine whether it wished to establish a lottery scheme. Where no such scheme exists, the *Criminal Code* offences still apply. Parliament has intentionally designed a structure for gaming offences that affirms the double aspect of gaming and promotes federal-provincial cooperation in this area. Section 207(1)(a) removes the possibility of operational conflict, and with it, any question of paramountcy.

36 I conclude that the *VLT Act* in its entirety, and s. 16 in particular, are *intra vires* the provincial legislature. The Act's purposes are to regulate gaming in the province and to allow for local input on the issue of VLTs, both of which fall under the powers enumerated in s. 92 of the *Constitution Act, 1867*. It is not an attempt to legislate criminal law, as it has neither penal consequences nor a criminal law purpose. Finally, the issues of interjurisdictional immunity and paramountcy do not arise in this case, and they need not be discussed beyond what has already been stated.

C. The Claim of Improper Delegation

37 Before turning to the various *Charter* claims, a brief comment is warranted on the argument raised by the intervening group of Alberta merchants. They challenged the entire *VLT Act* on the ground that it constitutes an improper abdication of the legislature's law-making powers and usurps the authority of the Lieutenant Governor. These interveners submit that, by allowing municipalities to hold binding plebiscites, the provincial government has given them the power to make and repeal law. This, they argue, violates the provincial legislature's exclusive authority to make laws for the province.

38 This submission fails, as the interveners' argument rests on an incorrect characterization of the impugned legislation. The *VLT Act* does not, in any way, empower municipal voters to enact legislation. The Act has been wholly drafted, debated and enacted by the provincial legislature, and has been given Royal Assent by the Lieutenant Governor. It sets out how the municipal plebiscites will take place and what their effects will be in the relevant municipalities. The only role played by municipal electors is in initiating and voting in a plebiscite. The results of the plebiscite determine whether the prohibition in s. 3 of the *VLT Act* will apply in the municipality. In other words, the application of the statutory VLT prohibition is conditional upon there being a certain plebiscite result. Consequently, the *VLT Act* falls within the category of "conditional legislation" which was upheld by the Privy Council in *Russell v. The Queen* (1882), 7 App. Cas. 829, at p. 835:

... the Act does not delegate any legislative powers whatever. It contains within itself the whole legislation on the matters with which it deals. The provision that certain parts of the Act shall come into operation only on the petition of a majority of electors does not confer on these persons power to legislate. Parliament itself enacts the condition and everything which is to follow upon the condition being fulfilled. Conditional legislation of this kind is

in many cases convenient, and is certainly not unusual, and the power so to legislate cannot be denied to the Parliament of Canada, when the subject of legislation is within its competency.

39 Through the *VLT Act*, the Manitoba Government has employed a statutory instrument to bind itself to respect local opinion. Nowhere does the Act, in purpose or effect, give municipal voters the power to legislate. This case is distinguishable from *Re The Initiative and Referendum Act* (1916), 27 Man. R. 1 (C.A.), upon which the interveners based their argument. There, the impugned legislation allowed voters to submit laws for approval by ballot and, if approved, the proposed law would be deemed an Act of the provincial legislature. Here, there has been no attempt to bypass the Legislative Assembly or to usurp its law-making function. The Act merely allows municipalities to decide on the applicability of the Act to their communities.

40 Finally, I would add that the interveners' argument would severely restrict Parliament and the provincial legislatures from enacting "local option" legislation, which was upheld over a century ago by the Privy Council in *Russell, supra*, with respect to the *Canada Temperance Act*. That decision was affirmed by the Privy Council in *Attorney-General for Ontario v. Canada Temperance Federation*, [1946] A.C. 193, and there is no need to question its continued validity as authority on this issue.

D. The Claim under Section 2(b) of the Charter

41 According to the appellants, the effect of the "deemed vote" in s. 16 of the *VLT Act* was to deny them the right to vote in a plebiscite under the Act and, therefore, to violate their freedom of expression in s. 2(b) of the *Charter*. There is no question since this Court's decision in *Haig v. Canada*, [1993] 2 S.C.R. 995, that casting a vote is a form of expression that is protected under s. 2(b). The question in this case is whether s. 16 of the *VLT Act* actually violates this freedom. I conclude that it does not.

42 While *Haig* held that voting is a protected form of expression, it also concluded that there is no constitutional right to vote in a referendum. See L'Heureux-Dubé J., at pp. 1040-41:

A referendum is a creation of legislation. Independent of the legislation giving genesis to a referendum, there is no right of participation. The right to vote in a referendum is a right accorded by statute, and the statute governs the terms and conditions of participation. . . . In my view, though a referendum is undoubtedly a platform for expression, s. 2(b) of the *Charter* does not impose upon a government, whether provincial or federal, any positive

obligation to consult its citizens through the particular mechanism of a referendum. Nor does it confer upon all citizens the right to express their opinions in a referendum. A government is under no constitutional obligation to extend this platform of expression to anyone, let alone to everyone. A referendum as a platform of expression is, in my view, a matter of legislative policy and not of constitutional law. [Emphasis in original.]

A municipal plebiscite, like a referendum, is a creation of legislation. In the present case, any right to vote in a plebiscite must be found within the language of the *VLT Act*. It alone defines the terms and qualifications for voting. Accordingly, the appellants cannot complain that the *VLT Act*, itself, denied them the right to vote in a VLT plebiscite.

43 A *caveat* was added in *Haig* that, once the government decides to extend referendum voting rights, it must do so in a fashion that is consistent with other sections of the *Charter*. However, as the appellants submitted that they had been denied referendum voting rights on a discriminatory basis, their claim should be assessed under s. 15(1), of which more will be said below.

44 Finally, it is worth noting that the *VLT Act* does not prevent the residents of Winkler from voting in future plebiscites on the issue of VLTs. They have not been disenfranchised from VLT plebiscites. Like all other residents of Manitoba, they are free to initiate a plebiscite under the Act to either reinstate or remove VLTs from their municipality.

E. The Claim under Section 7 of the Charter

45 The appellants also submitted that s. 16 of the *VLT Act* violates their right under s. 7 of the *Charter* to pursue a lawful occupation. Additionally, they submitted that it restricts their freedom of movement by preventing them from pursuing their chosen profession in a certain location, namely, the Town of Winkler. However, as a brief review of this Court's *Charter* jurisprudence makes clear, the rights asserted by the appellants do not fall within the meaning of s. 7. The right to life, liberty and security of the person encompasses fundamental life choices, not pure economic interests. As La Forest J. explained in *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at para. 66:

... the autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.

More recently, *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000

SCC 44, concluded that the stigma suffered by Mr. Blencoe while awaiting trial of a human rights complaint against him, which hindered him from pursuing his chosen profession as a politician, did not implicate the rights under s. 7. See Bastarache J., at para. 86:

The prejudice to the respondent in this case . . . is essentially confined to his personal hardship. He is not “employable” as a politician, he and his family have moved residences twice, his financial resources are depleted, and he has suffered physically and psychologically. However, the state has not interfered with the respondent and his family’s ability to make essential life choices. To accept that the prejudice suffered by the respondent in this case amounts to state interference with his security of the person would be to stretch the meaning of this right.

46 In the present case, the appellants’ alleged right to operate VLTs at their place of business cannot be characterized as a fundamental life choice. It is purely an economic interest. The ability to generate business revenue by one’s chosen means is not a right that is protected under s. 7 of the *Charter*.

F. *The Claim under Section 15(1) of the Charter*

47 The appellants argued that their rights under s. 15(1) of the *Charter* were violated by s. 16 of the *VLT Act*. This claim should be analyzed in accordance with the three-pronged test summarized by Iacobucci J. in *Law, supra*, at para. 88:

- (A) whether a law imposes differential treatment between the claimant and others, in purpose or effect;
- (B) whether one or more enumerated or analogous grounds of discrimination are the basis for the differential treatment; and
- (C) whether the law in question has a purpose or effect that is discriminatory within the meaning of the equality guarantee.

The appellants submitted that part (A) of the test was met because s. 16 of the *VLT Act* distinguished

between residents of Winkler and all other residents of Manitoba. They further argued that this distinction was based on the analogous ground of residence, and was discriminatory because it denied them the opportunity to vote in a binding plebiscite on the issue of VLTs.

48 There is no merit in this ground of appeal. First, although s. 16 of the *VLT Act* clearly makes a distinction between Winkler and other municipalities, it is implausible that residence in Winkler constitutes an analogous ground of discrimination. Residence was rejected as an analogous ground in both *Haig, supra*, and *R. v. Turpin*, [1989] 1 S.C.R. 1296. Further, the majority in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, clearly stated that the analogous ground recognized in that case was "Aboriginality-residence", and that "no new water is charted, in the sense of finding residence, in the generalized abstract, to be an analogous ground" (para. 15). In rejecting the claimant's s. 15 argument in *Haig*, the majority explained, at p. 1044, why residence is an unlikely analogous ground:

It would require a serious stretch of the imagination to find that persons moving to Quebec less than six months before a referendum date are analogous to persons suffering discrimination on the basis of race, religion or gender. People moving to Quebec less than six months before a referendum date do not suffer from stereotyping, or social prejudice. Though its members were unable to cast a ballot in the Quebec referendum, the group is not one which has suffered historical disadvantage, or political prejudice. Nor does the group appear to be "discrete and insular". Membership in the group is highly fluid, with people constantly flowing in or out once they meet Quebec's residency requirements. [Emphasis in original.]

Although the Court in *Haig* left it open for residence to be established as an analogous ground in the appropriate case, I share the trial judge's view here that this is not such a case. Nothing suggests that Winkler residents are historically disadvantaged or that they suffer from any sort of prejudice.

49 However, putting the appellants' case at its best and assuming that they could establish a distinction based on an analogous ground, the legislation does not discriminate against them in any substantive sense. It is not necessary to proceed through all the contextual factors listed by Iacobucci J. in *Law, supra*, because it is clear that the *VLT Act* directly corresponds to the circumstances of Winkler residents. The Town of Winkler was singled out in s. 16 of the *VLT Act* because it was the only municipality to have held a plebiscite on the issue of VLTs. The very purpose of that section was to respect the will of Winkler residents, as expressed in their 1998 plebiscite. Viewed in the context of that plebiscite, I am not convinced that any reasonable resident of Winkler would feel that he or she has been marginalized, devalued or ignored as a member of Canadian society (see *Law, supra*, at para. 53). There is no harm to dignity, and no violation of s. 15(1).

50 It was noted above in the s. 2(b) claim that s. 15(1) might be implicated where the opportunity to vote in a plebiscite is extended to some and withheld from others based on a prohibited ground of discrimination. This would be the case if a law prohibited members of a certain race or religion from voting in a plebiscite. However, that is not the case in this appeal. First, as previously noted, the distinction in s. 16 of the *VLT Act* is not based on an analogous ground. Second, the distinction does not affect the qualification and ability of Winkler residents to vote in a VLT plebiscite under the Act. They are free to initiate a plebiscite should they wish to reinstate VLTs in their community. Consequently, although s. 16 makes a distinction for Winkler residents, that distinction has nothing to do with the alleged right to vote.

VII. Conclusion and Disposition

51 These reasons support the October 31, 2002 dismissal of this appeal. The respondents are entitled to costs, and the stated constitutional questions are answered as follows:

- (1) Is *The Gaming Control Local Option (VLT) Act*, S.M. 1999, c. 44, in its entirety *ultra vires* the Legislature of the Province of Manitoba as it relates to a subject matter which is within the exclusive jurisdiction of the Parliament of Canada under s. 91(27) of the *Constitution Act, 1867*?

Answer: No.

- (2) Is s. 16(1) of *The Gaming Control Local Option (VLT) Act* *ultra vires* the Legislature of the Province of Manitoba as it relates to a subject matter which is within the exclusive jurisdiction of the Parliament of Canada under s. 91(27) of the *Constitution Act, 1867*?

Answer: No.

- (3) Is s. 16 of *The Gaming Control Local Option (VLT) Act* inconsistent with s. 2(b) of the *Canadian Charter of Rights and Freedoms*?

Answer: No.

- (4) If the answer to question 3 is in the affirmative, is s. 16 of *The Gaming Control Local Option (VLT) Act* nevertheless justified by s. 1 of the *Canadian Charter of Rights and Freedoms*?

Answer: It is unnecessary to answer this question.

- (5) Is s. 16 of *The Gaming Control Local Option (VLT) Act* inconsistent with s. 7 of the *Canadian Charter of Rights and Freedoms*?

Answer: No.

- (6) If the answer to question 5 is in the affirmative, is s. 16 of *The Gaming Control Local Option (VLT) Act* nevertheless justified by s. 1 of the *Canadian Charter of Rights and Freedoms*?

Answer: It is unnecessary to answer this question.

- (7) Is s. 16 of *The Gaming Control Local Option (VLT) Act* inconsistent with s. 15(1) of the *Canadian Charter of Rights and Freedoms*?

Answer: No.

- (8) If the answer to question 7 is in the affirmative, is s. 16 of *The Gaming Control Local Option (VLT) Act* nevertheless justified by s. 1 of the *Canadian Charter of Rights and Freedoms*?

Answer: It is unnecessary to answer this question.

Appeal dismissed with costs.

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